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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/069,103	02/22/2002	Marie-Laure Souvie	71247-0003	1683
22902	7590	07/12/2007		
CLARK & BRODY 1090 VERMONT AVENUE, NW SUITE 250 WASHINGTON, DC 20005			EXAMINER GAKH, YELENA G	
			ART UNIT 1743	PAPER NUMBER
			MAIL DATE 07/12/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/069,103

Applicant(s)

SOUVIE ET AL.

Examiner

Yelena G. Gakh, Ph.D.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 24-57 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 24-57 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

1. In response to the amendment the examiner rejoins all pending claims. Claims 24-57 are pending in the application.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. **Claims 24-39, 43-50 and 52-56** are rejected under 35 U.S.C. 103(a) as being unpatentable over Komata et al. (JP 04159399A) in view of Surbled et al. (WO 99/26600).

Komata discloses "lotus-like perfume composition which contains at least 10wt.%, preferably at least 20wt.%, 1,4-dimethoxybenzene and is useful as a perfume, an eau de cologne, an interior aromatic, etc. The incorporation of 5-20wt.% diisobutyl adipate and/or triethyl citrate in addition into this composition can give an excellent lotus-like fragrance because of

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synergism" (Abstract). Diisobutyl adipate has similar properties to diisopryl adipate recited in claims 36 and 56 and therefore is an obvious variation of diisobutyl adipate.

The examiner does not have a full translation of Komata's Japanese patent at the present moment, and therefore it is not apparent as to which solvent for his perfume is disclosed in the JP patent. It is well known, however, and it follows from the secondary reference, that ethanol is a conventional solvent for perfumes.

Surbled discloses: "the invention concerns a cosmetic composition comprising at least an aromatic compound and at least an agent for dissolving said aromatic compound, characterized in that said dissolving agent consists of perfluorinated hydrofluoroether preferably having a total number of carbon atoms not less than 5 and consisting of a perfluoroalkane chain, branched or not, cyclized or not, bound to an alkoxy group, said alkoxy group having a number of atom(s) between 1 and 7, and hydrofluoroether having a boiling point in atmospheric pressure ranging between +15 °C and +100 °C. The invention enables the replacement of ethanol conventionally used in cosmetic composition by at least one hydrofluoroether compound" (Abstract). Examples of the perfluorinated ethers are methoxynonafluorobutane ($C_4F_9OCH_3$) and its isomer $((CF_3)_2CFCF_2OCH_3)$, ethoxynonafluorobutane ($C_4F_9OC_2H_5$) and its isomer $((CF_3)_2CFCF_2OC_2H_5)$, and propoxyundecafluoropentane ($C_5F_{11}OC_3H_7$).

It would have been obvious for any person of ordinary skill in the art to replace ethanol conventionally used as a solvent in perfume compositions with perfluorinated hydrofluoroethers, as taught by Surbled, for e.g. perfume composition disclosed by Komata, because Komata's composition comprises aromatic perfume and Surbled specifically indicates that perfluorinated hydrofluoroethers are specially good solvents for aromatic perfumes.

It would have been obvious for any person of ordinary skill in the art to add conventional additives to the perfume composition such as UV filter, an antioxidant, or a dye depending on the intended use of the composition, including UV-protective crème, hairspray, or cosmetics.

Perfume compositions conventionally comprise components for improving the properties of the perfume compositions and co-solvents for better solubility.

6. **Claims 42 and 57** are rejected under 35 U.S.C. 103(a) as being unpatentable over Komata in view of Surbled, as applied to claims 24-39, 43-50 and 52-56 above, and further in view of Lindauer et al. (US 5,234,689).

While Komata in view of Surbled do not specifically disclose silicone as a second co-solvent for their compositions, Lindauer discloses in “Detailed Description of the Invention”: “the compositions of this invention contain one or more skin protective agents. These agents are well known in the art and protect the skin by forming an occlusive film which helps to retain moisture in or on the surface of the skin. The preferred skin protective agents are silicone and silicone derivatives such as, but not limited to, dimethicone, cyclomethicone and silicone copolymers” (col. 1, lines 61-68).

It would have been obvious for any person of ordinary skill in the art to add skin protective agents, such as volatile silicone, dimethicone or cyclomethicone, disclosed by Lindauer, in Komata-Surbled’s perfume compositions specifically for the reasons indicated by Lindauer, i.e. to add skin-protective moisture-retaining additives.

7. **Claims 40-41 and 51** are rejected under 35 U.S.C. 103(a) as being unpatentable over Komata, Surbled and Lindauer, as applied to claims 42 and 57 above, and further in view of Katada et al. (US 4,110,626).

While Komata, Surbled and Lindauer do not specifically disclose a phthalate, specifically diethyl phthalate, in addition to silicone, Katada teaches a method for improving the quality of fragrance or perfume by using aliphatic dibasic acid diesters (polyacid esters), comprising tests of *conventional* perfume additives, including diethyl phthalate (see Table 1 and col. 5, lines 39-42).

It would have been obvious for any person of ordinary skill in the art to add diethyl phthalate in Komata, Surbled and Lindauer’s perfume compositions, because Katada indicates that this is a conventional perfume additive.

All ratios of the components in the compositions, which are beyond the range of those indicated in the prior art, would have been obvious for any person of ordinary skill in the art, see *In re Aller*, 105 USPQ 233 (CCPA 1955): “the use of optimum amount of a known reactant is within the ambit of one skilled in the art”; and *In re Boesch*, 205 USPQ 215 (CCPA 1980): “the discovery of an optimum value of a known result effective variable without producing any new or unexpected results is within the skill of the routineer in the art”.


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yelena G. Gakh, Ph.D. whose telephone number is (571) 272-1257. The examiner can normally be reached on 9:30 am - 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on (571) 272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

6/16/07


**YELENA GAKH
PRIMARY EXAMINER**